IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6130 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBALAL S PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MUKUND M DESAI for Petitioner No. 1

Mr. B.Y.MaNKAD, Assistant Government Pleader for Respondents No. 1-2.

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/12/2001

ORAL JUDGEMENT

Leave to amend the name and address of respondent no. 3. This is a petition for a direction to the respondents to consider the services rendered by the petitioner at Ladol and Diu in calculating his pensionary services and to pay the same with all difference since the date of his retirement with interest at the rate of 12% per annum.

2. The petitioner was appointed as an Assistant Teacher at Ladol Highschool, Ladol, Dist: Mahesana with effect from 19th June, 1945. He served there till 3.6.1964. The petitioner was appointed as Assistant Teacher in the Union Territory of Goa, Daman and Diu and joined there with effect from 4.6.1964 and he joined as Assistant Teacher in Diu Government High School with effect from 4.6.1964 pursuant to the order date 12.5.1964. There is no break in his service and his services were continued till his retirement in the year 1982. The petitioner made serveral representations to the respondent no. 3 to consider his earlier services rendered at Ladol for pensionary benefits. He also made a representation to the Leutenant Governor of Goa on 27th November, 1981. He also sent a representation to the Director of Education to take further action on it. On 28th May, 1982, the Government of Goa issued one office memo containing instructions of Union Government to all the State Governments regarding allocation of pensionary liability in respect of temporary services rendered under Government of India and State Government. Thereafter, the petitioner again made a representation to the authorities and he also met the authorities concerned in person, but no action was taken by them. The respondents are not taking any action on representastion nor they are considering his previous services in calculating the pensionary services. Hence, he has a right under the provisions of Article 14 of the Constitution of India and that constitutional provisions have been violated and discriminated in Government service. He has not been paid due pension after considering the entire services rendered by him. As per Rules and regulations, the petitioner is entitled to full pension for maximum number of year taking into account the services rendered by him at Ladol and Diu. Both the Governments are therefore, liable to pay pension, but no action has been taken nor any response has been given.

3. Heard the learned counsel for the parties. The contention of the learned counsel for the petitioner is that the petitioner is also entitled for the pension for the services rendered by him from

19.6.1945 to 3.6.1964 rendered at Ladol Highschool, Dist: Mahesana and both the periods should be clubbed and he is entitled for the pensionary benefits the entire services rendered by him. The respondents have given the pensionary benefits regarding services rendered for the latter period. He also relied on the decision of the Supreme Court in the case of R.K.Gupta vs. Union of India and others reported in 1988 SCC (Labour and service), 881 wherein it has been held as under:

"As regards the period of services rendered by the petitioner under Central Government, there can no longer be any dispute in view of the decision of this Court in the case of R.L.Marwaha vs. Union of Inia an others reported in 1987(4) SCC, 31 decided on August 12, 1987 in which this Court has held that such services should be counted as part of the qualified services for the purpose of retirement benefits."

He also relied on the circular of the Education Department dated 23rd December, 1987 whereby it has been directed that both the services should be clubbed and retiral benefits should be given on the entire services rendered by the Government servant and the office memorandum of Government of Goa, Daman and Diu, Finance, Revenue and Control Department, Secretariat, Panaji, Goa dated 28th May, 1982. The relevant portion is extracted as under:

The Government servants claiming the benefits of combined service in terms of the above decision are likely to fall into one of the following categories:-

(1) Those who having been retrenched from the service of Central/State Governments secured on their own, employment under State/Central Government either with or without interruption between the date of retrenchment and date of new appointment:

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel with proper, permission of the Administrative authority concerned.

(3) Those who while holing temporary posts under Central/State Governments apply for posts under State/Central Government direct without the permission of the administrative authority concerned and resign their previous posts to join

the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above where an employee in category (2) is require for administrative reasons for satisfying a technical requirement, to tender resignation from temporary posts held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servants in category (3) will obviously, not be entitled to count their previous service for pension."

4. I have carefully considered the contentions of the learned counsel for the parties. It appears from the decision of the Supreme Court as well as the circular cited by the learned counsel for the petitioner that the petitioner is entitled for the retiral benefits (pensionary benefits) for the entire period of services rendered by him. In the present case, the petitioner has made several representations to the respondent no. 3, but no action has been taken nor any reply was sent to the petitioner. In the facts and circumstances, it is desirable that the petitioner should make a representation to the authority concerned-respondent no. 3 and the respondent no. 3 should decide the same in accordance with law, rules and regulations, Government circular and as per the guidelines given by the Supreme Court by a speaking order.

5. In the result, this petition is being disposed of finally with a direction that the petitioner will make a fresh representation to the respondent no. 3 within a period of six weeks from today and the respondent no. 3 authority will decide the same by a speaking order, in accordance with law, rules and regulations and guidelines set out in the above Supreme Court decision within a period of two months from the date of receipt of the representation, after giving an opportunity of hearing to the petitioner. Rule is discharged accordingly with no order as to costs.

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